

## 310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

### 310 CMR 36.00: MASSACHUSETTS WATER RESOURCES MANAGEMENT PROGRAM

#### PREFACE TO REVISIONS TO THE MASSACHUSETTS WATER RESOURCES MANAGEMENT PROGRAM (310 CMR 36.00)

Note: The following introduction does not form a part of the Water Resources Management Program Regulations (310 CMR 36.00).

#### Introduction

In 1986 the Department of Environmental Protection (the “Department”) promulgated, pursuant to its authority under M.G.L. c. 21G, the Water Management Act (the “Act”), regulations at 310 CMR 36.00 establishing a program for regulating water withdrawals in the Commonwealth (the “Regulations”). The stated purpose of the Regulations includes beginning the process of comprehensive management of the surface and groundwater of the commonwealth, as a single hydrologic system and ensuring, where necessary, a balance among competing water withdrawals and uses. In addition, as stated in the Act, the Regulations are “designed to protect the natural environment of the water in the commonwealth; to assure comprehensive and systematic planning and management of water withdrawals and use in the commonwealth, recognizing that water is both finite and renewable; and to allow continued and sustainable economic growth throughout the commonwealth and increase the social and economic well being and safety of the commonwealth’s citizens and of its work force.”

The science underlying the proper management of the state’s water resources has evolved since the initial promulgation of the Regulations. The Department now has more information and a better technical understanding of the importance of natural variation of streamflow in maintaining water resources and the effect that water withdrawals and other human influences have on the sustainability of such water resources for present and future generations. Consequently, the Department has amended the Regulations to more specifically reflect current scientific knowledge, thereby furthering the goal of insuring the preservation of the water resource itself and determining an appropriate balance among competing water withdrawals and uses.

Consistent with the above theme, the Department has determined that the original regulatory definition of “safe yield”, which is more narrow than the definition of this term in the Act, no longer sufficiently comports with the most current and protective technical basis for determining safe yield. The concept of safe yield is fundamental to the proper management of a water source, taking into account the natural variability of streamflow, and serves as the principal regulatory basis for determining the scope of permitted water withdrawals in a water source. The Department is working on a more refined, longer term approach to determining safe yield using the latest United States Geological Survey (“USGS”) research. Upon the completion and evaluation of this research, the Department expects to undertake a more comprehensive revision of the Regulations in the future. In the interim, the Department has amended the Regulations to eliminate the original, obsolete definition of safe yield, and inserted in place thereof the broader, more accurate definition of safe yield in the Act.

The Department’s interpretation and interim application of the statutory definition of safe yield is further specified in the Department’s “Water Management Act Policy for Permit and Permit Amendment Applications and 5-Year Reviews”, dated April 2, 2004 (the “Policy”). More specifically, the Policy: “1) requires more protection of our stressed water resources through implementation of conservation standards and other measures affecting nonessential water uses, 2) prevents conditions from getting worse by using higher standards to evaluate all proposed increases in water use, and 3) requires increased withdrawals to evaluate the feasibility of mitigating impacts through offsets in water management elsewhere and implement those that are feasible, commensurate with the degree of stress in the basin and impact of the withdrawal.”

Finally, the Department also amended and refined related provisions in the Regulations to ensure consistency with the statutory definition of safe yield and to make explicit the Department’s authority to require persons to provide information requested by the Department to determine whether such person is subject to or in violation of the Act or Regulations.

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36.01: Authority

310 CMR 36.00 is promulgated by the Department pursuant to the authority granted by M.G.L. c. 21G § 3 and by M.G.L. c. 30A §§ 2 and 3. 310 CMR 36.00 should be read together with the Massachusetts Water Management Act, M.G.L. c. 21G, which has many important provisions not repeated in 310 CMR 36.00.

36.02: Purpose

310 CMR 36.00 is intended to establish a program whereby withdrawals of water in the Commonwealth above a threshold quantity are registered and regulated by the Department, Division of Water Supply. The withdrawal registration program is intended to provide a procedure and deadline for persons making existing withdrawals above

a threshold quantity to file a registration statement with the Department. 310 CMR 36.00 is intended to enable the Department to document baseline water use in the Commonwealth and begin the process of comprehensive management of the surface and groundwater of the Commonwealth. 310 CMR 36.00 is also intended to establish a permit program for new water withdrawals. 310 CMR 36.00 provides a procedure for applying for, obtaining, maintaining and transferring permits for new water withdrawals in the Commonwealth above the threshold volume, and establish the criteria by which the Department will be guided in promoting the objectives of M.G.L. c. 21G. The purpose of the permit program is to assist the Department in the comprehensive management of the Commonwealth's water resources within its river basins in a manner which ensures an appropriate balance among competing water withdrawals and uses, as well as preservation of the water resource itself.

36.03: Definitions

As used in 310 CMR 36.00, the following terms shall have the following meanings:

Abutters means owners of properties which share a common boundary or corner with the lot of land on which a new withdrawal is located. Determination of ownership and common boundary shall be made with reference to the current local tax assessors' records and maps.

Abutters of abutters means the owners of those plots of land, as shown in current tax assessors' maps, which share a common boundary or corner with lots of land owned by abutters.

Act means the Massachusetts Water Management Act, M.G.L. c. 21G.

Annual statement of withdrawal means a report stating the volume of water a person is withdrawing pursuant to a registration statement or permit, filed with the Department in accordance with 310 CMR 36.00.

Aquifer means a geologic formation, group of formations or part of a formation that is capable of yielding a significant amount of water, as determined by the Department.

Commission means the Water Resources Commission of the Executive Office of Environmental Affairs.

Commissioner means the Commissioner of the Department of Environmental Protection.

Consumptive loss means that portion of a withdrawal which is estimated by the Department not to be discharged back to the basin from which it was withdrawn. The Department's estimation of the portion of a withdrawal considered to be consumptively lost to the basin shall be based upon the use to which the withdrawal is put and any interbasin transfer.

Department means the Department of Environmental Protection.

Estimated registration statement means a statement of pending registration; registration being based upon approximate withdrawal volumes from a water source calculated in accordance with Department guidelines.

Existing withdrawal means the average volume of water withdrawn from a particular water source during the five years prior to January 1, 1986; provided:

- (a) That if, during such period of five years, withdrawals from the water source have been interrupted due to contamination of the water source, the periods of such interruptions shall be excluded pro rata from the computation of existing withdrawal and
- (b) That the registration statement is filed with the Department on or before January 1, 1988.

Floodskimming means withdrawing volumes of water from surface or groundwater during a period limited to the floodskimming season, as determined by the Department.

MEPA means the Massachusetts Environmental Policy Act at M.G.L. c. 30, §§ 61 through 62H, and 301 CMR

11.00.

MGD means million gallons per day.

Minimum streamflow means the minimum streamflow for a particular river basin adopted by the Commission.

New withdrawal means any withdrawal of water which is not an existing withdrawal. New withdrawal includes, but is not limited to, an increase above a registered withdrawal in excess of the threshold volume.

Nonconsumptive use means any use of water which results in its being discharged back into the same water source at or near the withdrawal point in substantially unimpaired quality and quantity.

Nonconsumptive use notification statement means a report filed with the Department and accepted, stating the amount of water withdrawn and demonstrating that the use is nonconsumptive.

Permit means a permit issued by the Department under M.G.L. c. 21G, § 7 authorizing any new withdrawal of water.

Person means any agency, district, or political subdivision of the federal government or the Commonwealth, any state, public or private corporation or authority, individual, trust, firm, joint stock company, partnership, association, or other entity, and any officer, employee or agent of said person, and any group of said persons.

Proposed new withdrawal means any new withdrawal which has not obtained a final new source approval from the Department.

Public water system means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days of the year.

Registrant means any person who files a registration statement.

Registration statement means a report of an existing withdrawal filed on or before January 1, 1988 with the Department in accordance with M.G.L. c. 21G, § 5.

Renewal registration request means a document petitioning the Department for the renewal of a verified or estimated registration statement.

Safe yield means the maximum dependable withdrawals that can be made continuously from a water source, including ground or surface water, during a period of years in which the probable driest period or period of greatest water deficiency is likely to occur; provided however, that such dependability is relative and is a function of storage and drought probability.

Secretary means the Secretary of the Executive Office of Environmental Affairs.

Threshold volume means an average daily volume of 100,000 gallons for any period of three consecutive months, from a total withdrawal of not less than 9,000,000 gallons; or an average daily volume of 100,000 gallons for periods which exceed three consecutive months, calculated by dividing the total withdrawal by the period of operation.

Transfer of registration means a change in ownership of the right to withdraw a volume of water from ground or surface water withdrawal point(s) for which a registration statement was filed and accepted by the Department from the same withdrawal point(s). It does not mean, and is not sufficient to authorize any change in withdrawal rate between any ground and surface water source of supply.

Verified registration statement means a registration statement accepted by the Department based upon actual measured withdrawal volumes from a water source.

Water means all water beneath or on the surface of the ground whether wholly or partly within the Commonwealth.

Water management reference streamflow means the streamflow value adopted for each basin by the Commission for use in the development of basin safe yield pursuant to 310 CMR 36.00.

Water resources management official means the local official, designated by the chief elected official within a city or town, responsible for submitting and administering the water resources management plan in that city or town.

Water resources management plan means a local plan to meet water needs within a city or town, submitted by the chief elected official or designee to the Commission pursuant to the regulations of the Commission.

Water sharing means situations, other than during water emergencies, where withdrawers share water in amounts, authorized in a registration and/or permit, that are equal over a five year period.

Water source means any natural or artificial aquifer or body of surface water, including its watershed where ground and surface water sources are inter-connected in a single hydrological system. For the purpose of 310 CMR 36.00 a river basin as defined by the Commission is considered to be a water source except that for the purposes of safe yield calculations and application review only, a water source may be determined by the Department to be either a river basin, or a hydrologically distinct portion thereof, dependent on information satisfactory to the Department for the establishment of safe yield. For the purpose of public comment periods established in 310 CMR 36.22 and 36.23 only, a water source shall be defined by the Department as a hydrologically distinct subbasin.

Well means a bored, drilled, or driven shaft, or a dug hole, whose depth is greater than its largest surface diameter.

Withdrawal point means any well or intake structure used to withdraw water from a water source.

Withdrawal or withdrawal of water means the removal or taking of water for any purpose from a water source.

#### 36.04: Withdrawals Requiring a Registration Statement

- (1) Except as provided in 310 CMR 36.05, any person with an existing water withdrawal in excess of the threshold volume from a single water source shall file a registration statement with the Department on or before January 1, 1988.
- (2) Where two or more withdrawal points are controlled by the same person, a single registration statement per water source containing documentation on each withdrawal point shall be filed with the Department.
- (3) For the purposes of calculating the total existing withdrawal volume from each water source, the specific withdrawal volumes of all withdrawal points controlled by that person shall be combined, to obtain the total consumptive withdrawal volume.
- (4) For purposes of calculating the total existing withdrawal volume from a water source, transfers of water from a different water source shall not be included.

#### 36.05: Exemptions

Withdrawals of water that in the opinion of the Department constitute a nonconsumptive use are exempt from the need to file a registration statement or a permit application pursuant to M.G.L. c. 21G or 310 CMR 36.00. No registration statement or permit application shall include a withdrawal that has been determined by the Department to be nonconsumptive. Such uses include:

- (1) Diversions of surface water for hydropower generation provided the diverted water is returned at or near the withdrawal point and within the same water source in essentially unimpaired quality and quantity;

- (2) Any water withdrawal for which a Nonconsumptive Use Notification Statement is filed and accepted by the Department, in accordance with guidelines established by the Department.

36.06: Filing a Registration Statement

- (1) Any person required to file a registration statement under 310 CMR 36.04 shall complete and submit a registration statement on forms established by the Department.
- (2) Every registration statement must contain, at a minimum:
  - (a) Documentation of the actual or estimated amounts of water withdrawn;
  - (b) The use for which the water is being withdrawn;
  - (c) An identification of the water source and specific part of a water source from which the withdrawal is being made, in sufficient detail to describe the water source adequately;
  - (d) The locations of all withdrawal points;
  - (e) The volume of the withdrawal; provided however, that persons whose volume of withdrawals varies seasonally according to an established pattern shall describe that variation;
  - (f) Conservation measures instituted, or to be instituted, by the registrant;
  - (g) The point or points at which the water is discharged after use;
  - (h) Any other information requested by the Department relative to the withdrawal, use and discharge.
- (3) Any registrant who must estimate the amount of its withdrawal shall do so in accordance with guidelines established by the Department.

36.07: Incomplete Registration Statements

- (1) A registration statement shall not be considered complete if the Department determines that such registration statement:
  - (a) Does not provide all required information;
  - (b) Is not accompanied by the applicable registration fees;
  - (c) Is filed for a withdrawal that does not meet the definition of an existing withdrawal;
  - (d) Is filed after January 1, 1988 unless the Department determines that good cause for a late filing exists; or
  - (e) Contains information which is incorrect or misleading.
- (2) The Department is under no obligation to review or accept registration statements which are not complete.
- (3) A renewal registration statement shall not be considered complete if the Department determines that such renewal registration statement:
  - (a) Does not provide all required information;
  - (b) Is not accompanied by the applicable renewal registration fees; or
  - (c) Is filed after the expiration date of the registration statement which is to be renewed.
- (4) The Department is under no obligation to review or accept renewal registration statements which are not complete.
- (5) The Department is under no obligation to review or accept nonconsumptive use notification statements which are not complete.

36.08: Registration Conditions

- (1) The registrant shall comply at all times with any requirements and conditions imposed by the Department, M.G.L. c. 21G, and 310 CMR 36.00, and all other applicable state and federal statutes and regulations.
- (2) All registration statements filed on or before January 1, 1988, determined by the Department to be complete,

and accepted by the Department as verified, shall expire on January 1, 1998.

(3) The Department may conditionally accept any estimated, verified registration statement or renewal registration statement and may impose, at a minimum, the following conditions upon the person submitting such registration statements:

- (a) The installation of flow meters;
- (b) The accurate recording and record keeping of all future withdrawal information;
- (c) Estimated registration statements must be verified within five years;
- (d) The submittal to the Department of additional historical water use data such as population served; production information; and agricultural practices *etc.*, for the period five years prior to January 1, 1986. Such information shall be used to calculate a verified existing withdrawal value from current withdrawal information.

(4) The registrant shall furnish to the Department within a reasonable time as determined by the Department any information which the Department may request to determine whether cause exists for imposing conditions upon or not accepting a registration statement.

(5) All registrants shall file the annual reports required by 310 CMR 36.11.

(6) All registrants claiming a nonconsumptive use shall file a Nonconsumptive Use Notification Statement as specified in 310 CMR 36.05.

(7) All registrants wishing to renew registration statements shall file a renewal registration request as specified in 310 CMR 36.10.

#### 36.09: Transfer of Registration Statements

(1) Except as provided in 310 CMR 36.09(2), registration statements may be transferred, in whole or in part, from a registrant to another person if the Department is notified of the proposed transfer at least 30 days in advance of the proposed transfer date, the notice includes a written agreement between the parties to the transfer, provides the date that the proposed transfer is to take place and describes the registration to be transferred. A transfer request must be accompanied by the applicable fee established in 310 CMR 4.00.

(2) Registrations for cranberry cultivation verified using the results of the Cranberry Water Use Study may be transferred as provided in 310 CMR 36.09(1) only if the transfer is for continued cranberry cultivation. Cranberry registrations may not be transferred for any other uses unless the registration volume has been verified based on actual water use at the bog(s) to be transferred.

#### 36.10: Registration Renewal Requests

(1) Any person who has filed and had accepted by the Department a verified registration statement may file a renewal registration request with the Department. Upon the filing of a renewal registration request and by the expiration date specified in 310 CMR 36.08(2), such person shall be entitled to continue his existing withdrawal for a period of ten additional years.

(2) Any person who wishes to continue the use of an existing withdrawal thereafter, shall file a registration renewal request with the Department every ten years.

(3) Any person who has filed an estimated registration request for an existing withdrawal may file a renewal registration request with the Department if the provisions of 310 CMR 38.08(3)(c) have been met.

(4) All registration renewal requests shall be accompanied by a registration renewal fee payment in the amount specified in 310 CMR 4.00 or 310 CMR 36.15, as applicable.

(5) Failure to file a registration renewal request by the expiration date shall result in the loss of the registrants' right

to withdraw the water covered by the registration statement until a permit for such withdrawal has been obtained from the Department.

36.11: Annual Reports For Registrations

Each person who has filed and had accepted by the Department a verified or estimated registration statement shall file an annual report. The deadline for filing such an annual report, and the nature, content and details of filing the report shall be specified in guidelines established by the Department.

36.17: Withdrawals Requiring a Permit

- (1) Each person, prior to making a new withdrawal from a withdrawal point or points within the Commonwealth in excess of the threshold volume from a water source, which is not a withdrawal for a nonconsumptive use in accordance with 310 CMR 36.05 and 36.38, shall obtain a permit for that withdrawal from the Department.
- (2) Withdrawal volumes in excess of the threshold volume from separate water sources require individual permits.
- (3) Withdrawal volumes which exceed a registered withdrawal by the threshold volume require a permit.
- (4) Water sharing, as defined in 310 CMR 36.03, not otherwise regulated by the Commission under the Interbasin Transfer Act and accompanying regulations requires approval of the Department. Water sharing agreements as defined in 310 CMR 36.03 and approved or found to be insignificant under the Interbasin Transfer Act by the Commission do not require permits.

36.18: Effective Dates for Permit Regulations by River Basin

- (1) The effective date of 310 CMR 36.00 for withdrawals from a water source is the first application form filing date listed in 36.18(7). This date and the date for making filed applications complete shall be as listed by water source (river basin) below.
- (2) After the effective date for the water source from which a withdrawal is made or proposed to be made within one year of that date, no person may make a new withdrawal or commence construction of any building or structure that would require a person to make a new withdrawal without first obtaining a permit.
- (3) A permit applicant who has filed an application for a new withdrawal, in accordance with 310 CMR 36.20(a), (b), (c), (d), (e), (f), (g), (h), (i) and (j), by the application filing date for that water source, and who can document that a withdrawal existed from that withdrawal point prior to the filing date, shall be issued an interim permit by the Department. An interim permit shall authorize continued withdrawal while the application is in review, on the condition that the application be made complete by the applicable completion date. An interim permit shall be issued for a withdrawal volume based on historic withdrawal information submitted as part of the permit application. An interim permit shall be valid until the Department approves or denies the applicant's request for a permit, but in no case shall it be valid for more than one year from the date of issuance. Interim permits may be renewed by the Department if a permit application has not been either approved or denied at the time of expiration of an initial interim permit.
- (4) Six months after the effective date in each basin, permit applications may be filed at any time. The completion date for these applications will be six months after the Department's receipt of the application.
- (5) A permit application form which is submitted to the Department more than 30 days before the effective date of the water source for the withdrawal will not be accepted by the Department.
- (6) A permit application for a withdrawal from a water source which is proposed to begin within a year of the effective date of permitting shall be filed by the effective date.



- (7) Effective dates for permit regulations, and initial application filing and completion are as follows:

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36.18: continued

<u>Water Source</u>	<u>Effective Date</u>	<u>Completion Date</u>
Hudson River Basin	August 31, 1988	February 28, 1989
Blackstone, Charles Basins	February 28, 1989	August 31, 1989
Ipswich, North Coastal Basins	August 31, 1989	February 28, 1990
Boston Harbor, Taunton Basins	February 28, 1990	August 31, 1990
South Coastal Basin	August 31, 1990	February 28, 1991
Cape Cod Basin	November 30, 1990	May 31, 1991
Islands Basin	February 28, 1991	August 31, 1991
Buzzards Bay Basin	May 31, 1991	November 30, 1991
Concord Basin	August 31, 1991	February 28, 1992
Ten Mile Basin	November 30, 1991	May 31, 1992
Deerfield Basin	February 28, 1992	August 31, 1992
Housatonic Basin	May 31, 1992	November 30, 1992
Farmington Basin	August 31, 1992	February 28, 1993
Westfield Basin	November 30, 1992	May 31, 1993
Millers Basin	February 28, 1993	August 31, 1993
Chicopee Basin	May 31, 1993	November 30, 1993
Quinnebaug Basin	August 31, 1993	February 28, 1994
Connecticut Basin	November 30, 1993	May 31, 1994
Nashua Basin	February 28, 1994	August 31, 1994
French Basin	May 31, 1994	November 30, 1994
Shawsheen Basin	August 31, 1994	February 28, 1995
Merrimack Basin	November 30, 1994	May 31, 1995
Parker Basin	February 28, 1995	August 31, 1995
Narragansett Basin	May 31, 1995	November 30, 1995

36.18: continued

- (8) The Department may establish a new date for a water source by amending 310 CMR 36.00 at any time. Any such amendment shall provide six months notice of the new dates in that water source.
- (9) The date for completing a permit application shall be extended by the Department if it determines that, for reasons beyond the control of the applicant, any of the following circumstances occur:
- (a) any applicable MEPA requirement for an Environmental Impact Report cannot be completed by the date;
  - (b) public comment periods and hearings as defined in 310 CMR 36.23 cannot be completed by the date;
  - (c) available safe yield information for that water source is not sufficient for decision on the application; or
  - (d) any applicable Interbasin Transfer Act requirement cannot be completed by the date.
- (10) The date for completing a permit application may be extended by the Department if it determines that:
- (a) the applicant demonstrates that, despite reasonable efforts, additional information requested by the Department after the application is filed cannot be provided by the completion date; or
  - (b) any other conditions exist, which were not caused by the applicant, and which in the interest of the purposes to be served by M.G.L. c. 21G, require additional time.

36.19: The Application Process

- (1) All applicants shall comply with the following general requirements: Each person required to obtain a permit shall file one copy of a permit application, on forms prescribed by the Department, by the effective date or subsequent filing date for permit applications for that water source. Each permit application shall be filed according to procedures outlined in 310 CMR 36.00. Each application shall contain the information required by 310 CMR 36.20 that is applicable to the withdrawal. An application is filed when it is received by the Department.
- (2) Where two or more withdrawal points within one water source are controlled by the same person, the permit applicant shall file a single application containing information on each withdrawal point with the Department.
- (3) For the purposes of calculating the total permit volume from each water source, the specific volume which the applicant is withdrawing or proposes to withdraw from each withdrawal point in that source shall be combined, exclusive of any volumes registered or volumes determined by the Department in or pursuant to 310 CMR 36.00 to be nonconsumptive.
- (4) Prior to or on the same date that the applicant submits a permit application to the Department, the applicant shall submit a copy of the application to the water resources management official in the city or town where the withdrawal point is located, or with the chief elected official in that city or town if no water resources management official has been designated.
- (5) Each applicant shall provide all additional information requested by the Department subsequent to filing a permit application, within the time specified in the Department's request.
- (6) Each application submitted to the Department shall be made complete by the date established in 310 CMR 36.18 above for completed applications for the particular source from which the water is withdrawn.
- (7) Applicants shall submit an Environmental Notification Form to the Executive Office of Environmental Affairs, pursuant to 301 CMR 11.00, no later than ten days after filing an application with the Department; or shall provide evidence of compliance with 301 CMR 11.00 requirements as described in 310 CMR 36.24.

36.20: Contents of a Permit Application

- (1) Each permit application filing shall include, at a minimum:
- (a) the reason(s) for the withdrawal, and the type of use (residential, industrial, agricultural, etc.) of the water withdrawn;

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- (b) an identification of the water source in which the withdrawal is located;
  - (c) the specific location of each of the applicant's withdrawal point(s) within the water source;
  - (d) the volume, frequency and rate of water to be withdrawn from each withdrawal point, the anticipated times of year of the withdrawals, and any projected changes in this information over a 20-year period;
  - (e) the length of time for which the permit is sought, as limited by provisions of 310 CMR 36.32;
  - (f) a description of water conservation measures instituted or to be instituted by the applicant, including a schedule for implementation of those measures;
  - (g) the amount and location of any water discharged by the applicant, and the number of any discharge permit for such discharge issued by the Department;
  - (h) the history of the withdrawal volume from each withdrawal point, since January 1, 1981;
  - (i) the name and address of the designated water resources management official, or chief elected official if such official is not designated, for the town or city in which the withdrawal is located;
  - (j) the applicable fee as specified in 310 CMR 4.00 *et seq*;
  - (k) any other information requested by the Department related to the withdrawal, its use, discharge, impacts, or information related to the factors the Department must consider in reviewing applications, as listed in 310 CMR 36.26.
- (2) Each application for a permit for a proposed new withdrawal shall also include:
- (a) a copy of any Environmental Notification Form filed;
  - (b) an evaluation, on a form provided by the Department, of the potential effect of the withdrawal on:
    - 1. water quality
    - 2. wastewater treatment
    - 3. waste assimilation
    - 4. groundwater recharge areas
    - 5. navigation
    - 6. hydropower resources
    - 7. water-based recreation
    - 8. wetland resource areas
    - 9. fish and wildlife
    - 10. agriculture
    - 11. floodplain
  - (c) any alternatives to the proposed withdrawal including a study of cost, feasibility and environmental effects of such alternatives, and including but not limited to leak detection and repair, conservation and demand management;
  - (d) the need for the withdrawal volume proposed, including a 20-year projection of water demand; and
  - (e) the impact of the proposed new withdrawal on other withdrawal points and water sources.
- (3) The applicant may include in the permit application, or the Department may require the following additional information:
- (a) any water resource protection measures affecting the withdrawal which have been implemented or which are planned by the applicant or by any other person;
  - (b) any agreements with an owner of property conveying an easement by deed which restricts the right of the owner of the property or of any other person to make a withdrawal from the same water source from which the applicant proposes to withdraw;
  - (c) the impact of the withdrawal on economic development and the creation of jobs in the Commonwealth;
  - (d) the impact of the proposed new withdrawal on other water uses, land values, investments and enterprises that are dependent on previously allowable withdrawals in the water source;
  - (e) identification of the area of contribution for any groundwater withdrawal point;
  - (f) any other information which relates to the proposed withdrawal, its impacts, use, or factors the Department shall consider in reviewing the application.
- (4) No applicant for, or holder of a permit, shall make any false, inaccurate or misleading statement in any record, report or application that the applicant or holder is required to keep or submit pursuant to 310 CMR 36.00.

36.21: Incomplete Permit Applications

- (1) An application for a permit shall not be deemed complete if the Department determines that the permit application:
  - (a) fails to provide all required information as listed in 310 CMR 36.20, and all further information that is requested by the Department pursuant to the provisions of 310 CMR 36.20(1)(k) by the date established in 310 CMR 36.18 for completion of the application.
  - (b) fails to demonstrate compliance with MEPA requirements as applicable;
  - (c) fails to demonstrate completion of applicable public notice requirements, as described in M.G.L. c. 21G and 310 CMR 36.22 and 36.23;
  - (d) after January 1, 1994, fails to demonstrate compliance with a local water resources management plan for any town or city in which the water is to be used;
  - (e) fails to demonstrate compliance with M.G.L. c. 21, §§ 8b through 8d of the Interbasin Transfer Act where applicable;
  - (f) fails to comply with 310 CMR 36.21(2).
- (2) An application for a permit, for permit review, renewal, amendment or transfer shall not be complete if the Department determines that the permit application:
  - (a) fails to provide all information required by 310 CMR 36.00 and all information requested by the Department;
  - (b) fails to include the applicable fee established in 310 CMR 4.00;
  - (c) fails to provide evidence of compliance with any relevant permit conditions of the Department;
  - (d) is not completed by the applicable date;
  - (e) otherwise fails to comply with 310 CMR 36.00.
- (3) The Department has no obligation to accept or review an incomplete application.
- (4) If the Department determines that an application is not complete by the applicable date established in 310 CMR 36.18, it may do one or any combination of the following :
  - (a) terminate any interim permit issued to the applicant pursuant to 310 CMR 36.18(3) or 310 CMR 36.34(6);
  - (b) require the applicant to comply with a compliance plan ordered or approved by the Department;
  - (c) assess an administrative penalty, in accordance with M.G.L. c. 21G, and M.G.L. c. 21A, § 16;
  - (d) extend the completion date in accordance with 310 CMR 36.18(9) and (10).

36.22: Public Notice Requirements

- (1) Each applicant for a permit which includes a proposed new withdrawal shall comply with the following public notice requirements:
  - (a) The applicant shall prepare a public notice of the proposed withdrawal, which includes:
    1. the location of the water source from which the withdrawal is to be made;
    2. the volume of water to be withdrawn;
    3. the name and address of the water resources management official(s) where a copy of the application will be available for inspection, and the times when it will be available;
    4. a statement that written comments on the granting of a permit may be filed with the water resources management official within 30 days of the notice's publication date;
    5. the name and address of the permit applicant.
  - (b) Within 14 days after the application filing date with the Department for that water source, the applicant shall publish the notice in a newspaper which carries legal notices, and which is of general circulation in the town or city where each proposed new withdrawal is to be located, and in each city and town within the same water source as the proposed new withdrawal.
  - (c) Within five days after the above publication, the applicant shall send a copy of the public notice (return receipt requested), noting the date of publication from which the comment period begun to run, to each owner

of record of properties abutting the property where the proposed new withdrawal point or points is located and to each owner of record of properties abutting the above properties. Roadways are not abutters or abutters of abutters. Railroad rights-of-way receive notice as abutters or abutters of abutters, but are not to be considered as abutters for the purpose of determining abutters of abutters.

(d) The applicant for a proposed new withdrawal shall within ten business days of completing the requirements in 310 CMR 36.22 submit a copy of the notice and an affidavit to the Department attesting to the fact that copies of all required notices were sent.

(2) No earlier than 30 days after publication of the notice described above, the applicant for a permit may submit to the Department a certificate from each water resources management official in each city or town in which the new withdrawal point(s) is located, which states that:

- (a) The proposed new withdrawal is not inconsistent with the local water resources management plan; and
- (b) No statement of opposition has been received in the 30 day comment period.

#### 36.23: Public Comment Period

(1) Following the Department's receipt of the affidavit described in 310 CMR 36.22(1)(d), the Department will send a summary of all applications to:

- (a) all registrants, permit holders (excluding interim permit holders) and those who have filed valid nonconsumptive use statements for volumes of water withdrawn from the same water source as the proposed new withdrawal;
- (b) the designated regional planning agency, and chief elected official for the community in which the proposed new withdrawal point is located.

The Department will mail all such notices for a water source at one time, to the extent practicable. Such notice will include a statement that the Department will receive comment for a period of time set by the Department, not less than 30 days and not to exceed 45 days.

(2) A summary of each public notice submitted to the Department in accordance with 310 CMR 36.22(1)(d) will be published in the Environmental Monitor within a month of the Department's receipt of the notice.

(3) The Department will accept written comment during the comment period set in 310 CMR

(4) The permit applicant shall respond in writing, as required by the Department, to all reasonable comments submitted to the Department by persons having an interest in the withdrawal.

(5) The Department may schedule a public hearing on any permit application if it determines, on the basis of comments received, that such a hearing is in the public interest. Any such hearing will be scheduled within 30 days of the close of the comment period but not before 14 days after notice of the hearing has been published in a newspaper of general circulation in the community where the withdrawal point is located and where abutters reside.

(6) The Department shall not deem an application complete until the applicant has responded to all written comments which are deemed reasonable by the Department following the comment period or any hearing scheduled by the Department.

#### 36.24: MEPA Requirements

(1) An applicant is deemed to have completed MEPA requirements for purposes of M.G.L. c. 21G and 310 CMR 36.00 when the Department receives:

- (a) a certificate issued by the Secretary stating that no Environmental Impact Report is required; or
- (b) a determination by the Secretary that the project does not meet MEPA review thresholds;
- (c) a certificate issued by the Secretary finding that any required Final Environmental Impact Report is adequate.

(2) The MEPA public notice required in 301 CMR 11.19(4) may be combined with the public notice required in

310 CMR 36.22.

36.25: Water Conservation Requirements

- (1) Each permit applicant must submit, in accordance with guidelines developed by the Department, a detailed water conservation program and implementation timetable with the permit application.
- (2) The Department shall review the conservation plan and timetable submitted with the permit application, and may include the conservation program and timetable, as a condition of the permit. The Department may reject totally or in part the plan submitted by the applicant and require different or additional conservation requirements and a timetable for implementation.
- (3) The Department may assess progress on this program in the permit review, renewal, amendment or transfer process, or as part of any enforcement action or investigation.

36.26: Issuance of Permits

- (1) In reviewing a permit application, the Department shall consider at least the following:
  - (a) the water available within the safe yield as determined by the Department in 310 CMR 36.31. Only the consumptive loss to the water source attributable to the new withdrawal(s) shall be considered in determining whether the permit application(s) in any permit round exceed the safe yield of the water source;
  - (b) the impact of the proposed withdrawal on other withdrawal points and on other water sources that are hydrologically interconnected with the water source from which the withdrawal is to be made;
  - (c) the anticipated times of year when the withdrawal is or will be made, and any projected changes in the withdrawal over a 20 year period;
  - (d) reasonable protection of water uses, land values, investments and enterprises that are dependent on previously registered, permitted or otherwise allowable withdrawals;
  - (e) the use to be made of the water proposed to be withdrawn and other existing, presently permitted or projected uses of the water source from which the withdrawal is to be made;
  - (f) the approved water resources management plan for any city or town in which the withdrawal is located;
  - (g) any State water resources management plan adopted by the Commission;
  - (h) reasonable conservation practices and measures;
  - (i) reasonable protection of public drinking water supplies, water quality, wastewater treatment capacity, groundwater recharge areas, navigation, hydropower resources, water-based recreation, wetland habitat, fish and wildlife, agriculture and floodplains; and
  - (j) the impact of the proposed withdrawal on reasonable economic development and the creation of jobs in the Commonwealth.
- (2) An increase greater than that described in 310 CMR 36.31 shall not be allowed unless the Department determines:
  - (a) that no significant harm to the environment or other users will result; and
  - (b) the withdrawal has a significant economic, social or environmental benefit to the Commonwealth or will result in an improvement in the public health, safety, or welfare.
- (3) If the Department determines that an increase smaller than that described in 310 CMR 36.31 is required to protect significant and valuable environmental resources or to protect the public health, safety or welfare, then the Department shall impose limitations on the proposed withdrawal, including but not limited to denial or reduction of the requested volume, offsets, management plans and operational restrictions as it deems necessary.
- (4) The Department shall rule on a withdrawal application:
  - (a) within 90 days of the completion date; or
  - (b) within nine months of the deadline set forth in 310 CMR 36.26(3)(a) if the Department determines that

additional time is necessary to give proper consideration to the application and sets a new deadline.

- (5) Preference will be given to permit applications or portions of those applications for a withdrawal volume within a water source which:
- (a) is filed and completed by the applicable dates; and
  - (b) is for a volume within the documented physical withdrawal capacity of the system as it existed on July 1, 1987; and
  - (c) for a public water supply, which obtained a letter from the Department before July 1, 1987 approving the final pump test report or approving final construction plans, or is from a withdrawal point which was not available for use due to contamination during the period 1981 through 1985 and for that reason is not registered; or
  - (d) for a water supply to which new source approval does not apply, which the Department determines to have been constructed and operating before July 1, 1987 based on documentation from the applicant.

36.27: Provisions of a Permit

- (1) The Department will issue one permit to authorize withdrawals from all withdrawal points in a water source by one person.
- (2) Each permit shall provide at least the following:
  - (a) the term of the permit;
  - (b) the maximum allowable withdrawal volume expressed in terms of average daily withdrawal per year or per some shorter period of time as applicable, from each withdrawal point;
  - (c) the identification and limitation of use of the water withdrawn; and
  - (d) the maximum allowable peak withdrawal.
- (3) No permit that is not an interim permit shall authorize a withdrawal beyond the scheduled expiration date for a water source, in no case for a term greater than 20 years.
- (4) No permit holder shall violate the provisions of a permit.

36.28: Permit Conditions

- (1) All permits shall be conditioned on at least the following:
  - (a) installation of flow meter(s) unless the Department determines that this condition is not applicable;
  - (b) accurate monthly recording and reporting of all future withdrawals unless the Department determines in writing that more frequent monitoring is required;
  - (c) operation and maintenance requirements;
  - (d) permission to the Department to enter the permit holder's facility or property to inspect and monitor the withdrawal and to inspect and copy any relevant records;
  - (e) implementation of water conservation measures;
  - (f) implementation of conditions that minimize the impact of the withdrawal on factors listed in 310 CMR 36.26;
  - (g) submission of an annual statement of withdrawal in accordance with 310 CMR 36.33;
  - (h) any conditions necessary to further the purposes of M.G.L. c. 21G or to assure compliance with 310 CMR 36.00;
  - (i) documentation of the need for any change in withdrawal volume, or documentation of achievement of specified milestones relating to future increased withdrawal over the life of the permit;
  - (j) that the withdrawal in combination with other registered and permitted withdrawals shall not exceed the safe yield of the water source;
  - (k) authorizing the Department to modify, suspend or terminate the permit as described in 310 CMR 36.29 and M.G.L. c. 21G.
  - (l) The inclusion, for public water suppliers, of conditions requiring the delineation of the Zone II, or Zone III as applicable, as defined in 310 CMR 22.00, to the public supply source(s) included in the permit within three



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years of the date of permit issuance, and the implementation, where appropriate, of land use control measures, consistent with those found in 310 CMR 22.00, intended to protect the quality and quantity of the water supply.

(2) The holder of a permit shall comply at all times with all conditions of the permit imposed by the Department, M.G.L. c. 21G, and 310 CMR 36.00 and with all other applicable federal and state statutes and regulations.

(3) The burden shall be on each permit holder to demonstrate compliance with all the provisions and conditions of the permit at all times.

### 36.29: Modifications, Suspensions and Terminations

The Department may issue orders to modify, suspend or terminate any permit or to require the permit holder to cease any activity or to comply with any procedure, or otherwise to enforce 310 CMR 36.00 or the provisions of M.G.L. c. 21G, at any time if it determines that:

(1) the permit holder has violated any provisions of M.G.L. c. 21G, the permit, these or other applicable regulations, permit conditions, or a Department Order; or

(2) such action is necessary for the promotion of the purposes of M.G.L. c. 21G; or

(3) The safe yield of, or other indications of stress on the water source requires such action for the protection of public health, safety and welfare; or

(4) the permit holder has failed to properly apply for permit review or renewal as applicable.

### 36.30: Permit Denials

(1) The Department may deny a permit application or impose restrictions on a permit if it determines that:

(a) the withdrawal will not conform to the standards established by 310 CMR 36.00;

(b) the withdrawal will negatively affect any of the factors listed in M.G.L. c. 21G or in 310 CMR 36.26;

(c) the applicant has submitted information in the permit application which the applicant knew or reasonably should have known was false or misleading;

(d) the proposed withdrawal will cause the safe yield of the water source to be exceeded;

(e) the application is not complete by the applicable date.

(2) The Department shall deny any or all permit applications for withdrawals from a water source if it finds:

(a) that the combined volume of existing, permitted and proposed new withdrawals exceeds the safe yield of the water source; or

(b) that the existing, permitted or proposed withdrawals are otherwise in conflict; or

(c) after January 1, 1994, the city or town in which the withdrawal is to be used does not have a water resources management plan approved by the Commission.

### 36.31: Safe Yields

(1) In determining the safe yield of a water source, the Department may consider at least the following:

(a) the natural variability of streamflow and aquatic habitat protection;

(b) the water balance of the water source;

(c) the hydrologic impacts of proposed, existing and permitted withdrawals;

(d) the safe yield of any isolated or severely impacted subbasin within the water source;

(e) any information or guidelines developed by the Department of Conservation and Recreation or the Water Resources Commission; and

(f) any other or additional information deemed applicable or relevant by the Department.

(2) For the purposes of determining the average annual withdrawal to be permitted from a reservoir, the

Department will use the response of the reservoir to the drought of record, unless the applicant has a drought management plan which details specific steps to be taken in response to droughts and the means to measure results. In the event that the plan complies with the Department's standards, the Department will consider the response of the source(s) to the best approximation of a 1/20 year drought. The reservoir system's firm yield derived from this analysis will then become the basis for permitting maximum annual average withdrawals from the reservoir(s).

36.32: Permit Expiration Dates

- (1) The Department shall not issue permits for a term or any portion of a term which exceeds the permit expiration date for the water source from which the permitted withdrawal is made, and in no case for greater than 20 years.
- (2) All permits that remain in effect until the permit expiration date shall expire on the date scheduled in 310 CMR 36.32(3)(a) or (b).
- (3) Permits shall have expiration dates as follows:
  - (a) River basins Hudson, Housatonic, Deerfield, Westfield, Farmington, Connecticut, Millers, Chicopee, Quinebaug, French, Nashua, Merrimack, Shawsheen, Parker, Boston Harbor (Mystic & Weymouth & Weir), South Coastal Shore and Narragansett shall expire not more than 20 years from the effective date of permit regulations for the water source.
  - (b) River basins Blackstone, Concord, Ipswich, North Coastal, Boston Harbor, Neponset, Charles, South Coastal (North and South Rivers), Cape Cod, Islands, Buzzards Bay, Taunton and Ten Mile shall expire not more than 20 years from the effective date of permit regulations, except that, in particular hydrologically distinct portions of these river basins, the Department may determine at the time of permit issuance that the safe yield of the water source requires an earlier expiration date.
- (4) The term of any individual permit may be shorter than 20 years, on request of the applicant, or on determination of the Department that a shorter permit term is appropriate.

36.33: Reporting and Review Requirements

- (1) Each permit holder shall file an annual statement of withdrawal which includes at least the following:
  - (a) average daily volume of water withdrawn on a monthly basis over the past 12 months;
  - (b) conservation measures instituted in the past 12 months;
  - (c) savings due to conservation measures implemented;
  - (d) metering records;
  - (e) system updates;
  - (f) anticipated change in future water demand estimates.
  - (g) the applicable fee as established in 310 CMR 4.00
- (2) Each permit holder shall retain a copy of all withdrawal records for at least ten years.
- (3) No person shall make false or misleading statements in any record which that person is required to file or to keep pursuant to 310 CMR 36.00.
- (4) Each holder of a permit which has a term greater than five years shall file every five years for a review of the permit on a form provided by the Department at least 60 days prior to the fifth anniversary of the original permit application date. The permit holder shall submit at the time of service any additional information requested by the Department. An application for review will not be deemed to be filed unless it is accompanied by the applicable fee. The Department will review for adequacy and compliance all permit conditions and provisions, additional information submitted by the applicant, and any available safe yield information. The Department may modify permit conditions or provisions accordingly.
- (5) Any proposed increase in volume over threshold to be withdrawn above the permitted volume shall be

considered in conjunction with the five year review, provided that the proposed increase shall be requested as a permit application according to 310 CMR 36.00. Such proposals shall also include:

- (a) any proposed increases in volume withdrawn by withdrawal point, or changes in location of withdrawal point, that differ from projections in the original permit application;
- (b) a demonstration that proposed volume increases are needed.

#### 36.34: Permit Renewals

(1) At least 90 days but no sooner than 120 days prior to the expiration date for permits from a water source, a permit holder who wishes to renew a permit shall apply for a renewal on a form provided by the Department. The information to be submitted shall build on and amend any information submitted in the original permit application.

(2) An application for permit renewal shall include at a minimum:

- (a) the authorized withdrawal volume proposed to be renewed;
- (b) any proposed changes in permit provisions or conditions other than any increase in volume, with the reason for such proposed changes;
- (c) a demonstration that permit conditions have been complied with;
- (d) updated demand projections for the 20 years following the date of permit renewal.

(3) Any proposed increase in volume to be withdrawn shall be requested in a permit application, in accordance with 310 CMR 36.00, and shall include:

- (a) the proposed increase in volume withdrawn, by withdrawal point, or change in location of withdrawal point(s) from the original permit application;
- (b) a demonstration that the proposed volume increase is needed;
- (c) all permit application requirements as described in 310 CMR 36.20 and 36.21.

(4) The Department shall publish in the Environmental Monitor a notice of all proposed permit renewals and any proposed changes in their permit conditions. The Department shall receive comments for 30 days from the date of such publication.

(5) The applicant for permit renewal shall respond within 30 days to all reasonable comments made regarding the proposed renewal.

(6) The Department shall grant an interim permit to any permit holder seeking permit renewal, which authorizes continued withdrawal of the previously permitted volume, on the condition that the permit holder completes the process for permit renewal and otherwise complies with 310 CMR 36.00 and permit conditions. An interim permit shall be valid until the Department approves or denies the applicant's request for a permit, but in no case shall it be valid for more than one year from the date of issuance. Interim permits may be renewed by the Department if a permit application has not been either approved or denied at the time of expiration of an initial interim permit.

(7) No application for renewal of a permit shall be deemed filed unless it is accompanied by the applicable fee.

(8) If the Department determines that an application for permit renewal is not filed according to 310 CMR 34.00, it may take any of the actions in 310 CMR 36.21(4).

#### 36.35: Permit Amendments

(1) A permit holder, who seeks to modify a permit during the term of the permit, to decrease permit volume, change location of a withdrawal point, add a withdrawal point, change a permit condition, change location of discharge point(s), or otherwise amend a permitted withdrawal shall submit a request to amend the permit to the Department on a form provided by the Department.

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(2) Any request for amendment by a permit holder to increase a withdrawal shall be requested in a permit application as described in 310 CMR 36.00, and shall include at a minimum:

- (a) a demonstration that any proposed volume increase is needed;
- (b) a demonstration that permit conditions have been met;
- (c) a request to amend any other permit provisions or conditions and the reasons for such request;
- (d) a demonstration that the factors originally considered by the Department will not be substantially affected by the amendment.

(3) Each request for a permit amendment shall be accompanied by the applicable fee established by 310 CMR 4.00.

### 36.36: Transfer of a Permit

(1) No permit shall be transferred unless and until the permit holder has filed an application for transfer with the Department and the Department has authorized the transfer in writing.

(2) An application for transfer for all or part of the withdrawal volume authorized by a permit shall be filed by the permit holder at least 30 days in advance of the proposed transfer date.

(3) Any transfer of a permit that does not require a change in the provisions or conditions of the permit shall be approved by the Department, unless the Department determines in writing that the safe yield of the water source is in danger of being exceeded or that the transfer would otherwise be contrary to the intent or purpose of M.G.L. c. 21G.

(4) A request for transfer of a permit that requires amendment of permit volume or of any permit provision or condition, will be deemed to be a request for permit amendment by the Department.

(5) Each application for a transfer of a permit shall include a written agreement between the permit holder and the proposed transferee in which the transferee agrees to accept the provisions and conditions of the permit and which states a specific date for transfer of permit responsibility between them.

(6) Each application for transfer of a permit shall be accompanied by the applicable transfer fee.

### 36.37: Fee Schedule

Permits issued pursuant to 310 CMR 36.00 to persons, as defined in 310 CMR 4.00, are subject to the provisions of 310 CMR 4.00 *et seq* concerning fees and schedules for timely action, as set forth in 310 CMR 4.00.

### 36.38: Nonconsumptive Use Statements

(1) Any volume of water withdrawn for a nonconsumptive use shall not be counted in the volume of water withdrawn for purposes of calculating whether a withdrawal exceeds the threshold volume.

(2) Any person claiming a nonconsumptive use for all or part of a permitted withdrawal shall file a nonconsumptive use notification statement according to guidelines established by the Department on or before the date that 310 CMR 36.00 become effective for the water source from which the water is withdrawn.

(3) Any person asserting that the use of a volume of water is nonconsumptive must demonstrate to the satisfaction of the Department, that the volume of water meets the definition of nonconsumptive use in 310 CMR 36.00, and that no other existing registered or permitted withdrawers are substantially affected.

(4) No volume of water withdrawn for nonconsumptive use shall be permitted by the Department unless the Department determines that such a permit is required to protect other registered or existing permitted withdrawals.

### 36.39: Recognition of Normal Variation for Existing Withdrawals

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(1) At the time when initial permit applications are due to be filed for a water source, any person who has an accepted registration statement for an existing withdrawal may request that the registration statement be amended to include an amount of water which the Department determines to be within the normal variation of the average volume withdrawn between January 1, 1981 and December 31, 1985. Following the date that all permit applications in the water source are required to be complete, the Department shall amend the registration statement to recognize the normal variation as an existing withdrawal, except that the Department shall not recognize as an existing withdrawal:

- (a) any volume in excess of one standard deviation of the average existing withdrawal volume for which a registration statement was accepted by the Department;
- (b) any volume which together with volumes to be permitted in the initial round of permitting exceeds 50% of the adjusted safe yield of the water source; adjusted safe yield being the volume in a water source available for permitting.

(2) Where all normal variations of registered withdrawals requested in a water source cannot be recognized because of the preclusion established in 310 CMR 36.39(1), the Department shall not recognize any volume in excess of the average existing withdrawal volume for which a registration statement has been accepted by the Department.

(3) Notwithstanding 310 CMR 36.39(1) and (2), for registrants who withdraw surface water from more than one water source, normal variation may be, at the discretion of the Department, a volume not to exceed 2.5 times the standard deviation of the average existing withdrawal volume for each water source for which a registration statement was accepted by the Department, provided that no recognition of such normal variation shall authorize withdrawals in any year of a volume which exceeds the sum of the existing withdrawal volumes from all of the registrant's water sources for which registration statements were accepted by the Department. For the purpose of 310 CMR 36.39, standard deviation of the average existing withdrawal volume is defined as the unbiased estimate derived from the sample of five annual volumes of the registered withdrawal.

### 36.40: Appeals

(1) Any person, who is aggrieved by a decision of the Department with respect to any permit application, or an addition to an existing withdrawal may request an adjudicatory hearing before the Department, under the provisions of M.G.L. c. 30A. Each request for a hearing must be sent by certified mail or hand delivered, and received by the Department within 21 days of the date of receipt of the decision being appealed. At the same time that the appeal is sent or hand delivered to the Department, a copy of the appeal must be sent by certified mail or hand delivered to the local water resources management official in the city or town where the withdrawal point is located.

(2) Any person who appeals a decision of the Department, who is neither the applicant nor the registrant authorized to make or continue a withdrawal, is required to notify the registrant or permit applicant of the appeal by certified mail or by hand within five days of filing the appeal. For the purpose of 310 CMR 36.00, an aggrieved person is any person who may become a party to or who may intervene in the proceeding in accordance with 310 CMR 1.00.

(3) Each request for a hearing under 310 CMR 36.40 shall state clearly, concisely and in what manner the person, in whose name the request is made, is aggrieved and the remedy that is being sought.

(4) In every proceeding the burden shall be on the applicant for, or the holder of a permit, to demonstrate compliance with 310 CMR 36.00 including the provisions of 310 CMR 36.40.

(5) Any person aggrieved by a final decision of the Commissioner may seek judicial review of that decision in Superior Court, in accordance with M.G.L. c. 30A.

### 36.41: Signatures

(1) All statements, permit applications and requests filed under 310 CMR 36.00 shall be signed as follows:

- (a) For a corporation, by a responsible corporate officer. For the purpose of 310 CMR 36.41, a responsible

corporate officer means:

1. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation; or
  2. The manager of a manufacturing, production, or operating facility, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
- (b) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or
- (c) For a municipality, State, Federal, or other public agency: by either a principal executive officer or a ranking elected official. For purposes of 310 CMR 36.41, a principal executive officer or a Federal agency includes:
1. The chief executive officer of the agency; or
  2. A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrator of EPA).

(2) All reports required and other information requested by the Department shall be signed by a person described in 310 CMR 36.41(1), or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- (a) The authorization is made in writing by a person described in 310 CMR 36.41(1);
- (b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility; and
- (c) The written authorization is submitted to the Department.

(3) Any person signing a document under 310 CMR 36.41(1) or (2) shall include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete."

#### 36.42: Right of Entry

Agents and employees of the Department may make such inspections of property, facilities or operations owned or controlled by persons subject to 310 CMR 36.00 as the Department may determine are necessary to carry out its responsibilities under M.G.L. c. 21G. Any person subject to 310 CMR 36.00 shall allow such agent or employee free and unrestricted access at reasonable times to examine any property, facility, operation, equipment or activity involving the withdrawal of water. Such agents or employee(s) may, inspect, conduct tests, and review books, papers and records pertinent to any matter determined by the Department to be relevant to the administration or enforcement of 310 CMR 36.00.

#### 36.43: Enforcement

The Department may issue such orders as it deems necessary to aid in the enforcement of the Act and 310 CMR 36.00. Such orders may require any person subject to 310 CMR 36.00 to cease any activity which is in violation of M.G.L. c. 21G or of 310 CMR 36.00, or to carry out activities necessary to bring such person into compliance. The Department may also require any person to submit information as the Department may reasonably require to evaluate whether that person is subject to or in violation of M.G.L. c. 21G or of 310 CMR 36.00.

#### 36.44: Severability

If any provision of 310 CMR 36.00 or their application is held invalid, such invalidity shall not affect other provisions or applications of 310 CMR 36.00 which can be given effect without the invalid provision or application, and the provisions of 310 CMR 36.00 are declared to be severable.

REGULATORY AUTHORITY

310 CMR 36.00: M.G.L. c. 21G, §§ 3, 5 and 7.